

The Political Economy of Sub-Saharan Africa Land Policies

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Abstract

The quest for African poverty alleviation has become a global issue and governments of rich nations have registered their commitment to the task both through the Millennium Development Goals and other international programs. While poverty is endemic in Africa, extant policies that continue to dictate proceedings in the land sectors of most African nations have been constructed in a way that concentrate benefits and wealth on a few while spreading costs and poverty on a larger segment of the African population. These policies which continue to impose greater restrictions on poverty alleviation have emanated from the peculiar political and economic history of Africa. An understanding of how these political events continue to shape the performance of land markets in these countries within the context of contemporary economic learning is thus key to understanding the policy directions required for success. This paper thus employs public policy and transaction costs insights to explicate the historical political events that have led to the promulgation of such policies together with a conceptual view of their social cost implications.

JEL Classification Codes: P26, Q15, Q24, D23, O55

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INTRODUCTION

This paper employs transaction cost analysis and public choice theory to examine political influences that have shaped land policies in sub-Saharan Africa with greater emphasis on Ghana. The conditions that have given rise to poverty in Africa are manifold ranging from corruption, political instability, unfair international trading rules, outdated policies and laws, poor social and economic infrastructure, weak capital and financial markets, poor human resource development systems, malfunctioning land and real estate markets, and so forth. While efforts by rich nations to rid Africa of poverty through debt cancellation and aid donations provide no more than temporal relief, they are appreciated, but only to the extent that they help remove conditions that give legitimacy to poverty in Africa. Otherwise, they warrant no great confidence.

In recent times, perhaps as a response to research under the new institutional economics rubric in the 1970s, there is growing concern about making land tenure contribute meaningfully to the quest for poverty alleviation in Africa. This has inspired a closer look at the workings of land markets and government interventions in the region (Quan, 1997; Toulmin & Quan, 2000; Quan, 2000; Platteau, 2000; Delville, 2000; Okoth-Ogendo, 2000; Cousins, 2000; Palmer, 2000; Wily & Hammond, 2001; Deininger, 2003). It is well established in neoclassical economic theory that, from an efficiency standpoint, land policies, like all forms of government interventions are desirable only on occasions of true market failures and excessive transaction costs (Coase, 1960; Pigou, 1962; Tisdell, 1974). Yet in reality, extensive research (Hogwood & Gunn, 1984; Rose, 1986; Nakamura, 1987; Stone, 1989; Jenkins-Smith, 1990; Lindblom & Woodhouse, 1993; Stone, 1996; Dye, 1998; Sutton, 1999; Parsons, 2003) shows policies, whether in sub-Saharan Africa or in advanced capitalists economies, are determined largely on political and bureaucratic considerations sometimes merely spiced with economic reasons. This implies a prerequisite to understanding these policies is an appreciation of the political and bureaucratic forces that have constructed them. The polar departure here is the usage of economic analysis; in particular, transaction costs theory to explicate the historical origins of the policies that are dictating proceedings on these land markets.

PLURALISM, PUBLIC CHOICE AND TRANSACTION COSTS

The processes by which policies evolve vary markedly between societies and political systems (Cobb & Elder, 1972; Jenkins-Smith, 1990; Rochefort & Cobb, 1994). While it is recognized that the policy processes can be examined from the rationalist and pluralist perspectives, there is no space here to look at both perspectives in an in-depth manner. Thus the pluralist approach is employed solely to examine the land policy processes of sub-Saharan Africa (for a discussion on the rationalist alternative, see Laswell, 1956; Simon, 1957; Mack, 1971; Jenkins, 1978; Hogwood & Gunn, 1984; Rose, 1986).

The pluralists deem public policies as the outcome of free competition between ideas and the interests of many actors (Parsons, 2003). These actors typically comprise public opinion (Hogwood & Gunn, 1984), the media, experts and professionals including think tanks (Parsons, 2003), bureaucrats (Niskanen, 1973), interest groups (Sutton, 1999) and politicians and voters (Downs, 1957). The complexity here stems from the fact that each policy actor tends to hold peculiar ideologies, values and interests that are often in conflict with those of others (Dahl & Lindblom, 1953). Policy formation accordingly turns on pluralism, mutual adjustment, consensus seeking and incrementalism (Lindblom, 1959; 1980; Nakamura, 1987; Stone, 1989; Sabatier & Jenkins-Smith, 1993; Lindblom et al., 1993). Progress is thus made in the policy process only when there are means of resolving conflicts of values, interests and ideologies between policy actors in a way that makes formation of Pareto efficient policies⁴ possible.

Public policy studies (McKean, 1965, pp. 496-505; Haveman, 1976, pp. 235-250) suggest that in such a process optimal outcome in policy formation is achievable when all actors involved are fully equipped with relevant knowledge and are willing to negotiate and build consensus on

⁴ This is the policy that drives the recipient economic system to the point where it is no longer possible to improve the well being on one individual without making at least another individual worse off.

policy choices that offer the ultimate means of maximizing individual and societal welfare. Additionally it requires “a political process in which the full set of impacts of a decision on all citizens, the poor and minority groups as well as those with power, be somehow registered with decision makers” (Haveman, 1976, p.239). The ideal form of the pluralist process can be likened to a “smoothly functioning market system” in which the full costs and gains of any decision as experienced by individuals would be brought to bear on the decision maker (Jenkin –Smith, 1990, p. 30). Such an ideal policy process is based on the assumption of a widely diffused power structure in which each participant has equal influence on problem definition, agenda setting, and policy choice (Parsons, 2003). It is nonetheless well established that such an ideal policy processes is non-existent in reality (Jenkins-Smith, 1990) because unequal distribution of power between policy actors is a pervasive fact of political life (Brams, 1968, p.461). Often, it is the government of the day that dominates the policy process.

Public choice economists (Downs, 1957; Tullock, 1967; Niskanen, 1971; 1973; Buchanan, 1975; McLean, 1987; Mueller, 2004) present a formal objection to the conventional welfare economics view that governments are benevolent actors in the public interest with sacrosanct public policy roles. By using economic principles of rationality, individualism and self interested behaviors to examine behaviors of voters, politicians, voting rules and bureaucracies it is possible to understand or predict the true ends of the policies they formulate and implement (Mueller, 1989). Buchanan and Tullock (1962), Tullock (1965) and Downs (1967) the accredited originators of the ideas of modern public choice theories have laid the basis for the debate on the dangers of politicization of the economic and public policy processes. Particularly, Tullock (1965) and Downs (1967) basing their argument on self-interest maximizing behavior of political actors illustrate the harmful consequences of a government that would become ever more autonomous and sovereign in the policy processes. The extent to which this latter proposition has manifested in the land policy processes of sub-Saharan Africa is examined shortly.

Whilst public choice theory provides a powerful and convincing model for explaining policy processes from an economic angle, it is difficult to test in any meaningful quantitative terms in reality (Parsons, 2003, p.311). Besides, it omits an explicit treatment of how differing levels of transaction costs could produce differing behavioral patterns in policy actors. This is exceptional, given that, following Coase (1960), there is now something of a general agreement among economists that transaction costs form a crucial determinant of the efficiency of any exchange economy (Williamson, 1979; 1981; 1986). Thus without exploring the implications of transaction costs on the so-called political exchange economy it is impossible to imagine how policy problems that present themselves today can be traced to their real sources. The basic thesis of transaction costs theory is that higher transaction costs impede, while lower transaction costs promote, efficiency in any exchange economy. The relevant costs here includes background information search costs, organizing formidable and identifiable policy groups, costs of negotiating policy contents, costs of consensus building particularly in the area of problem definition, agenda setting and selection of alternatives as well as costs of monitoring and enforcement of policies when enacted. Other important costs include the costs of overcoming mistrust, uncertainty, duplicity and opportunism that may exists in the policy processes. Attempt is thus made here to explicitly incorporate these costs in the analysis of the sub-Saharan Africa land policy processes.

A competitive policy process akin to the democratic political regime is conventionally argued to offer the best model for efficient policy formation (Dahl, 1961; Cobb et al., 1972; Rochefort et al., 1994; Jenkins, 1999). This paper takes issue with this position and argues on the contrary, that both competitive and monopolized policy processes offer identical potential for efficient policies if transaction costs were nonexistent. Their relative efficiency depends on their inbuilt comparative transaction costs. Thus a competitive policy process could thus be even more inefficient than a monopolized system if their inbuilt transaction costs are relatively higher.

THE SUB-SAHARAN AFRICA LAND POLICY PROCESSES

Persistently, the African political scene has witnessed the concentration of power in the hands of a minority in power either through invasion, as in the colonial era, or the creation of a one party

state through military interventions and despotism in the emergent democratic processes. These political events have culminated in exorbitant transaction costs in the policy processes out of which the region's land policies have emerged. These events are discussed in turn.

The Colonial Regime

Much has been written about the despotic rule of the colonial administration in Africa and how that influenced the determination and definition of problems, agenda settings and the choice of policies (Harris, 1975; Sender and Smith, 1986; Mabogunje, 1987; Platteau, 1992). Suffice to point out in this analysis that, during this period, the exploitative objective of the concept of colonialism (Kaniki, 1985) was the driving force behind the autocratic governance structure instituted out of which much of the initial land policies in the region emerged. The 1895 statement by the then UK Prime Minister, Lord Salisbury (cited in Kaniki, 1985) to the UK Parliament exemplifies the main concerns of the colonial monopoly administration. Lord Salisbury wrote:

It is our business in all these new countries to make smooth the path for British commerce, British enterprise, the application of British capital, at a time when other paths, other outlets for the commercial energies of our race are being gradually closed by the commercial principles which are gaining more and more adhesion. In a few years it will be our people that will be masters, it will be our commerce that will prevail, it will be our capital that will rule... this is a tremendous power, but it requires one condition. You must enable it to get to the country where its work is to be done.

To accomplish this end there was the need to raise the costs of political opposition so the indigenous Africans who presented the eminent threat to this agenda were precluded from the policy process. The political institutions during this time were made up exclusively of the white minority. Policy decisions were arrived at without reference to the Africans and the Africans could only oppose policies from outside the formal policy making arena. Conflict in policy formation was thus between the social system and the formal decision making body. This meant that transaction costs faced by the Africans in seeking that their views were taken care of in the policy process were enormous. It entailed the formation of viable countervailing forces with strong opinion leaders whose views cannot be ignored even though they operated outside of the formal policy arena. Agenda building and policy formation thus tended on two principal transaction costs. One was the cost at which the countervailing forces could expand issues to gain the attention and support of a wider, even international, interested group and the second being the costs that the colonial powers were likely to incur if they ignored the views of the group.

If the cost of ignoring the views of the expanded audience or international interested group was regarded insignificant in comparison to the gains, the administration had enough motivation to ignore them. However, where it was costly to ignore, the administration was bound to take note of the countervailing forces. As Cobb and Elder (1972) explained, in such a situation issues that are unlikely to be ignored comprise (1) issues that are more socially significant; (2) issues that have long term relevance and (3) issues that lack clear precedent. Although, with regard to land policies all these conditions were present, the critical determinant of whether the views of the opposing forces would have to be taken account of was the ability of the opposing forces to bear the costs of expanding the conflict beyond the local formal policy arena. This was well illustrated when it came to the promulgation of colonial land nationalization policies. In some eastern, central and southern African countries where the opposing forces were unable to bear the full costs of issue expansion, their views did not represent a significant threat to the colonial administration and hence they were conveniently ignored. In these countries, the colonial administration successfully enacted policies that vested all property rights in "vacant lands" in the government of the day for redistribution (Noronha, 1985; Platteau, 1992). This tallies with the public choice view of what harm an overbearing sovereign could fashion.

In particular, in these countries the main beneficiaries of land policies of the colonial regime were the minority white settlers and private firms favored by the metropole (Glickman, 1988 p.

28). A case in point is the land redistribution policies in East Africa under the colonial regime in which contrary to the well-developed peasant agriculture found in Uganda and other African countries at the time of colonization (Kaniki, 1985); the beneficiaries of the redistribution of lands by the administration were the white minority. Such was the generosity of the redistribution policy that at one time Lord Delamere, a European entrepreneur, owned more than 400,000 hectares of land in Kenya (Kaniki, 1985). Similarly, in southern Rhodesia (now Zimbabwe), by 1911, Europeans owned about 7,700,000 hectares and by 1925, they owned 12,500,000 hectares at give away prices (Kaniki, 1985). Kaniki in fact reported that in southern Rhodesia “in 1894 each member of the Victoria and Salisbury columns recruited to crush the Ndebele was promised 6000 acres of farm land”. These represent the origins of the violent clashes over land in present-day Zimbabwe.

Rationally, citizens will incur such transaction costs required to oppose such policies when they envisage the potential benefits to be at least commensurate with the costs. In countries such as Ghana, Nigeria and Ivory Coast where the opposing forces incurred the full costs of issue expansion around the 1890s they (the opposing forces) were able, in the case of Ghana for instance, to go all the way to England to protest to the English parliament and monarchy (Rimmer, 1992). Having expanded the issue this much, the colonial administrations in these countries could only ignore their views at extraordinary costs. They thus could not be ignored in fact (Mabogunje, 1989) and the policy of outright land nationalization that took root in eastern, central and southern Africa could not be applied in these West African countries (Rimmer, 1992). But in countries where the transaction costs for opposing such policies were unbearable the citizens became essentially cordoned off the policy process and the process of policy making became a game for those who can afford. In such countries opposing forces were ignored and the colonial administration had free hand in dissipating the land resources to the white minority and European merchants (Sender and Smith, 1986) as exemplified above. Where they could not be ignored the administration gained access only to those lands they acquired at full market prices (Meek, 1949). Policy decisions enacted more than a century ago continue to have economic repercussions on some of these societies many years after the colonial era.

As a result of these policies for instance, land ownership structure in eastern, central and southern Africa is severely skewed in favor of few whites or Europeans. This has engendered postcolonial clamor for more equitable redistribution of land resources by Africans, which are being honored through policy reforms at great costs (Toulmin and Quan, 2000). In some countries such as Zimbabwe the clamor is being honored through forceful takeovers of lands owned by whites leading to violent clashes, loss of lives, political instability and insecurity. Meanwhile in West Africa, the successful opposition presented by the countervailing forces prevented such skewed land ownership structure in these countries. Land ownership is thus more proportionately distributed in these countries and this has not specifically led to remarkable policy reforms and political events.

Interestingly however, across Africa, when it came to policies that regulated the activities and land transactions of indigenous land owners without necessarily nationalizing the lands, the opposing forces that had successfully subverted the earlier land nationalization policies were benign and presented no opposition whatsoever. These later regime of policies appear to be enacted to ensure state surveillance over the activities of land owners with the view to preempting and forestalling any activity or transaction that is likely to threaten colonial exploitation or breach of the peace which was vital for their exploitation. Generally, the central theme of these regulative policies followed the recommendations of the West African Committee set up to look into the causes of land litigations in parts of West Africa. The key recommendation of the Committee was that all transfers of interest in land to non-natives by Africans should be considered invalid unless it were by lease for a term of years and were made with the consent of the Governor ⁵ (Meek, 1949). In Ghana, for instance, this recommendation was implemented

⁵ The governor would, they suggested, only give consent after receiving a report from the District Commissioner showing the area and boundaries of the proposed grant, whether the title properly belonged to the community proposing to grant it, whether the community fully assented, whether the consideration

under section 3 of the Concessions Ordinance (No.19 of 1939) as well as the Local Government Ordinance of 1951. In Kenya, the Crown Lands Ordinance of 1902 prohibited land sales between Africans and Europeans altogether (Platteau, 1992, p.97). These regulations were intended to curb the emergent litigation emanating from the then rampant land sales between African landowners and European concessionaires (Platteau, 1992; Woodman, 1996).

Having expended many resources in subverting the nationalization policies, the West African countervailing forces appeared to have exhausted their resources and could not mount similar opposition. Another explanation could be that rationally, the citizens did not see the potential benefits to be commensurate with the costs. A great deal of the lack of opposition to such policies may also relate to the transaction costs faced by the African landowners and countervailing forces in obtaining the relevant information to be able to appreciate the full and long term implications of such regulations of their rights (see Alchian, 1965; Demsetz, 1967; Pejovich, 1997). In the absence of such information, opposing forces saw very little gain in incurring the costs of opposing as those in West Africa had done previously. It is highly probable given the supply of available land that at the time the restriction on their property rights did not reduce their earnings from land significantly. As Meek (1949) reveals most of the transactions were informal and purchasers were comfortable with any form of receipt or site plans, most of which had no bearing with the true triangulations of the land in question. Since these regulative policies were only enforceable when transactions were brought to the attention of public officials, very few of such transactions were subjected to these policies given the state of land documentation. Thus the practical impact may well be very minimal and hence did not warrant the costs of opposition. Indeed it is possible that eminent opposing forces perceived these policies as more beneficial even, as it enabled indigenous landowners to retain ownership of their lands even after they have sold the land.

It is evident from property rights insights (Becker, 1977; Ault & Ruthman, 1979; Pejovich, 1990) that had power in the policy process been fairly distributed and costs of transactions including costs of obtaining relevant information and the costs of opposition been low, landowners would have favored free markets. Thus, they would have opposed such trade restrictions that evidently reduced their rights to free trade.

The Single Party Postcolonial Regimes

Autocratic or monopolized policy processes instituted by colonial regimes became convenient legacies for succeeding postcolonial regimes. Hameso (2002) argues “the post-independence leaders took over the political kingdom in its enticing state”. Yet at independence some five decades ago, all postcolonial African countries emerged as democracies governed by constitutions framed along the lines of what pertained then in the respective imperial countries of the colonial authorities (Bratton & De Walle, 1994). Power within the policy process was diffused and transaction costs were lower than during the colonial era. Soon, “political plurality were decried as bottlenecks to the project of ‘nation-building’ and national unity”(Hameso, 2002). The new African leaders who adopted a socialist ideological stance (Sender and Smith, 1986) faced enormous transaction costs in seeking to impose their views and ideologies on society. But the notion that socialism was the desired objective does not seem to fit well as Europe has had several social democratic governments that have embraced socialism without resorting to dictatorship. As it turned out, the real rationale for the choice of socialism at the time was two fold. First was to meet the growing demands of the emergent African bourgeoisies who had contributed to the achievement of independence and hence were better placed to demand favors from the incumbent. Second was the urgent need for the new nationalist governments to consolidate power over national resources to be able to institute central planning and state direction of resource allocation in accordance with the then mainstream development economics ideologies in vogue (Sender and Smith, 1986). This second agenda also gained credence from the

offered was adequate and the grant would not materially interfere with the community’s requirements in the matter of agriculture, fishing, hunting and the collection of natural products.

then favorable outlook of socialism and state interventions in the Soviet Union and England (Sender and Smith, 1986). As Young puts it:

development economists, sympathetic to state-led development and dominant modernisation theories readily acknowledged that economic development came first with democratisation expected to follow later (Young, 1996, p. 54).

This second rationale also made it more convenient for the first rationale to be accomplished through distribution of favors to the clients of the state after the state had gained a free hand in the control and allocation of vital resources. Transaction costs that the incumbents would need to incur to accomplish these two agendas were likely to have been very high in a pluralist environment, as it would entail reaching agreement with all countervailing forces on policy agenda and contents as well as overcoming uncertainties in the policy process as explained earlier. Nonetheless in a truly democratic pluralist system where public opinion and the media matter in decision making, the costs of maintaining strong opposition are on the contrary likely to be low. In Ghana, for instance the choice of a socialist agenda by the first post-independent administration led by Nkrumah easily precipitated the formation of an opposition group, the National Liberation Movement (NLM) who immediately successfully represented an important impediment to the socialist goals of Nkrumah (Killick, 1978). The NLM went to the extent of calling for a federal system of government to whittle down the power of Nkrumah. The call eventually led to another election in 1954 three years before independence (Card, 1975).

The costs of formulating these so-called socialist policies from the perspective of the incumbent was thus mammoth and the options left for the government of the day was either to incur the costs of negotiating with the opposition or incur the costs of eliminating the opposition altogether. The second option meant that the transaction costs of opposition were to be raised so high to make it unprofitable to oppose. Since the outcome of any negotiation with the opposing forces was uncertain and potentially unfavorable to the incumbents the first option was unsustainable. The most plausible option left was to raise the transaction costs of opposition and to ultimately eliminate the opposition (Rimmer, 1992). In Ghana the transaction costs of opposition were pegged so high that it became practically impossible for the opposition to partake in the policy process. However, the idea of eliminating opposition is really something that coincides with a desire for totalitarianism and megalomania, not socialism.

This was realized by transforming the multiparty democratic colonial political legacy in which transaction costs was relatively low to a single party system in which the opposition faced virtually all the costs of consensus building. To achieve this goal, in 1960s and 1970s most countries in sub-Saharan Africa transformed their political systems from a pluralist multiparty system to a monopolized one-party system. Such was the commitment to power-hungry dictatorship that during this period, thirty-two of the fifty-four African countries converted from a multiparty political system to a single party political system (Bratton and de Walle, 1994). By the end of this conversion period, power to enact policy became almost exclusively concentrated in the hands of the incumbent with all opposing forces and pressure groups substantially cordoned off the policy process.

Ultimately in countries such as Ghana, this entailed removing the constitutional provisions that mandated decentralized government structures. This was followed by rapid expansion of presidential powers in tandem with the removal of constitutional checks on the executive branch of government and then the imposition of a one party state (Daddieh, 2001). Nevertheless, this path to the single party state was rugged. The process commenced by discrediting political opposition. Indeed political opposition was viewed as despicable (Hameso, 2002). In Malawi the leadership argued: “there is no opposition in heaven. God himself does not want opposition – that is why he chased Satan away. Why should Kamuzu [the then president] have opposition?” (Decalo, 1992, p.10). Chinua Achebe painted the picture of the conversion process in Nigeria more succinctly as: “all argument should cease and the whole people speak with one voice and that any more dissent and argument outside the door of the shelter would subvert and bring down the whole house” (Achebe, 1967, p. 37). These were only to prepare the ground for

what was to come. Transaction costs of opposition were to be explicitly heightened. The costs of opposition in some countries eventually became literally equivalent to the price of human life and to incur it meant to choose death in place of life. In Ethiopia opposition was met with physical elimination and liquidation (Hameso, 2002). In Ghana, the process was more dramatic and extraordinary and in the event it led to the promulgation of land laws whose concealed agenda was to crash the opposition. Paradoxically these land Acts continue to form the thrusts of land policies in Ghana. The Ghana case is peculiar and needs further elaboration.

The Ghana Case in Perspective

Nkrumah, the first Prime Minister of Ghana, devoted the first nine years of his administration to eliminating the opposition (Card, 1975). At the time of independence, the main leaders of the opposition, the professional elites, had strong family or lineage ties with the Chiefs in the Ashanti and Akim-Abuakwa communities of Ghana (Card, 1975). Chiefs were by custom political leaders of their respective communities as well as the custodians of all the land resources of their respective communities. They thus commanded great influence. Meanwhile their elevated status during the colonial era (Noronha, 1985) placed them in the position of parallel opposing political power (Bretton, 1967; Rimmer, 1992; Firmin-Sellers, 1996). Given the land resources they controlled, the lineage ties the Ashanti and Akim-Abuakwa Chiefs had with the main political opposition parties and the parallel political power they present, they represented an important obstacle to the socialist agenda of Nkrumah. Nkrumah could thus make meaningful headway only if the maneuvers of the chiefs and their allies could be quelled or at least make it too costly for them to engage in policy making or even to lend financial or other supports to other opposition organs. Nkrumah vowed to make sure that some of those who constituted the main obstacle would “runaway and leave their footwear behind” (Kasanga, 2002). Nkrumah pursued this agenda by first infiltrating customary law and practices with politics. During these periods, there were rampant destoolments (removal) of chiefs that were known sympathizers of the opposition in Ghanaian communities such as Kade, Abodom in Akim- Abuakwa (Ghana, 1959). These were followed up with legislation to remove for instance the Offinsohene (Chief of the Offinso community) to a place 30 miles radius from his state while the Gyasehene of Akim Abuakwa was banned from the state and ordered to stay 60 miles away (Ghana, 1959).

Five years ahead of the launch of Nkrumah’s first Seven Year development plan and barely a year after formal independence, Nkrumah launched an arsenal of enactments aimed evidently at crashing the opposition. Amid the series of enactments to crush the opposition, ranging from the Preventive Detention Act, under which some opposition members were jailed without trial and The Sedition Act and the Criminal Act, which provided for the death penalty for political crimes without trial by jury, were two land Acts. These land Acts were the Ashanti Stool⁶ Lands Acts of 1958 and the Akim Abuakwa (Stool Revenue) Act of 1958. These Acts indeed heightened the transaction costs of the chiefs and the opposition as it essentially took away the fiduciary role of the affected Chiefs over their land and thus stripped them of stool land revenue. Stool land revenue was alleged to be the main source of finance for the opposition. Such was the priority attached to these land Acts that they were enacted under certificate of urgency. The motion for the Akim Abuakwa (Stool Revenue) Act, 1958 bill presents a telling example. The then Minister for Local Government in presenting the bill to parliament for debate and enactment into law stated as follows:

Notwithstanding anything contained in the Standing Orders of this House if by 11.45 a.m. today the motion for the second reading of the Akim Abuakwa (Stool Revenue) bill has not been disposed of Mr. Speaker do put any question necessary to dispose of it. That the Committee stage be taken immediately after the second reading; that if by 12:40 p.m. the Committee stage has not been

⁶ Stools are a category of land owning communities that are made up of a number of families, clans and individuals. Not all families belong to stools and even where they do there is normally a distinction between the lands owned by the family and those owned by the stools.

disposed of, the chairman do put any question necessary to dispose of it and report the bill forthwith; and that if by 12:50 p.m. the motion for the third reading has not been disposed of Mr. Speaker do put any question necessary to dispose of it (Ghana Parliamentary Debate, 1958).

By this time the Criminal Acts that came along as a package with these land enactments had almost made opposition equal to accepting to be jailed or even killed. Such a high transaction cost was evidently unbearable and the opposition could hardly subject the Act to any scrutiny. Such an important Act was passed by parliament in an hour and a half unexpurgated. Subsequently these Acts together with other succeeding Acts relating to Stool lands were eventually consolidated under the Administration of Lands Act, 1962. Under this new Act the principle was expanded to cover all stool lands in the country. This Act is presently termed “vesting policy” in Ghanaian parlance. The accomplishment of these vesting policies in Ghana has been phenomenal. They vest virtually all the ingredients of property rights in the affected stool lands in the government of the day for redistribution. The rights expropriated from the affected stools include the right to: (1) possess (2) use (3) manage (4) alienate (5) security of tenure (6) bequeath and (7) mortgage. Table 1 depicts the Stool lands affected by the vesting policy in Ghana so far.

Table 1: Stool Lands Vested In the Government

No.	Location	Region	Instrument	Date	Size
1	Stool Lands in Koforidua	Eastern	E.I. ⁷ .195	1/11/61	19.47 km ²
2	Stool Lands in Nkawkaw	Eastern	E.I.195	1/11/61	n/a
3	Efutu &Gomoa Ajumako Land	Central	E.I. 206	21/11/61	n/a
4	Kumasi Part 1 Lands	Ashanti	Act 123	14/06/62	24.55 km ²
5	Winneba	Central	E.I. 83	6/6/63	I mile radius
6	Accra-Tema	Greater Accra	E.I.108	18/9/64	n/a
7	Inchaban	Western	E.I. 28	20/07/98	n/a
8	30 Stool Lands in Brong Ahafo	Brong Ahafo	E.I.46	18/2/61	n/a

Source: Field survey- compiled from the records of the Lands Commission, Ghana.

In its current form, the policy gives the government direct control over all incomes from the affected Stool lands as well as non-affected Stool lands in the country. To this extent Stools in the country have legal rights to only 22.5% of all revenue from Stool land transaction. That is to say 77.5% of gross stool land revenue (capital and or rental) is deducted at source almost as tax. In this context it is unclear the sense in which Asiama (1990; p.247) argues that the vesting policy “leaves ownership substantially in the landowner’s hands”.

The Act actually made government through its agencies the managers of these affected stool lands and empowered it to allocate these lands to potential developers without reference to the expropriated owners and at the discretion of the officials in charge. These lands are allocated on leasehold basis at about 90% rental subsidy. Thus, as a bi-product of this Act it made it possible for benefits by way of land allocation to be concentrated on the privileged few beneficiaries of the allocated lands at the expense of the expropriated owner and a larger segment of the non-benefiting Ghanaian taxpayer. It is now well established in the literature that the main

⁷ Executive Instruments or subsidiary legislation

⁸ The affected stool lands include: (1) dormaa (2) Nsoatre (3) Sunyani s (4) Fiapre (5) Odumasi No. 1 (6) Awua Dumasi (7) Acherensua (8) Hwidiem (9) Kenyasi (1 & 2) (10) Ntrotroso/Gyedu Wamahinso (11) Mehami (12) Goaso (13) Kukuom (14) Mim (15) Kasapin (16) Akrodie (17) Sankore (18) Ayomso (19) Pomaakrom (20) Seikwa (21) Nchiraa (22) Manji (23) Bredi (24) Branam (25) Subinso (26) Nsawkaw (27) Offuman (28) Tanoboasi (29) Booyam (30) Techiman.

beneficiaries of lands under these policies are the top civil servants and influential figures in Ghanaian society (Asiama, 1990; Antwi, 2000). To underscore the full repercussions of this Act thus it is pertinent that the costs imposed on landowners and the taxpayers as well as the benefits from the management of the revenue and the allocation of these lands are ascertained.

Nkrumah's particular interest in crushing the Chiefs to gain exclusive control over policy making has led to these policies that discriminate against Stools as opposed to family, clan and individual land owners, imposing costs on them. Apart from regulating their incomes, Nkrumah enacted policies that subjected Stool land transactions only to government surveillance and scrutiny. This regulative policy is referred to in Ghana commonly as "Concurrence policy" which was fashioned along the lines of the recommendations of the West African Lands Committee (see footnote 1). This can be explained in the light of the reasons for enacting the vesting policies against the Stools. The concurrence policy has now been given constitutional assent in Article 267(3) of the 1992 constitution though with somewhat different slant towards land use planning.

By this time, the costs of opposition had been made practically unbearable and real opposition had vanished from the scene (Card, 1975). Nkrumah thus could now pursue the socialist's agenda, which as mentioned was itself motivated by the need for self-aggrandizement (Card, 1975; Killick, 1978). An important land policy that underpins socialism is the policy that gives unhindered access to land (Buchanan, 1999). The colonial policies on expropriation was adequate as it had enough safeguards against abuse of government powers in compulsory acquisitions and unfairness in the acquisition process by insisting that all government acquisition must receive certification by the courts. This however was too constraining for the Nkrumah regime as it made arbitrary use of power in the manner envisaged under Nkrumah's socialist agenda practically impossible. This meant the transaction costs of implementing socialism in Ghana by the one-party regime would have been high, entailing the payment of compensation for every piece of land required for socialist production and development agenda or risk hostilities and revolts from the populace. The conundrum that such high transaction costs presented was made explicit in the speech by Nkrumah in launching the seven-year development plan (1963-70). Nkrumah notes:

...the state will be controlling on behalf of the community the dominant share of the economy. This would have been accomplished without ever having to resort to such expedients as nationalisation, which if carried out with full compensation would only change the ownership of the means of production...and if carried out without such compensation would inevitably incur such a large measure of hostility as to make our development plans very much more difficult to achieve (quoted from Larbi, 1995: 42).

With the costs of overt nationalization clearly unbearable to the government a clever and subtle approach to nationalization had to be found if socialism was to succeed. This meant that a new law was required that offered reduced transaction costs in state land acquisition. The State Lands Act, (Act, 125) of 1962⁹, was thus passed. The memorandum to this Act betrays the true intents of this policy. It established that:

The bill dispenses with the need to obtain a certificate from a court to effect vesting of land in the republic, and provides that a declaration by the president shall constitute the vesting instrument.

Though this Act did not specifically exempt the state from compensation payments, the requirement for compensation payment under the law has been so spuriously contrived to make compulsory acquisition without compensation legally possible. Under this policy it became possible to divorce compulsory acquisition from compensation in such a way that it was possible

⁹ Other expropriation laws such as The Lands (Statutory wayleaves) Act, (Act, 186) of 1963 and the Public Conveyancing Act, (Act, 302) of 1965 were also enacted by the regime along similar lines though they have been used infrequently as compared to the State Lands Act.

for government to acquire land and use immediately and pay the compensation at a time of their choosing. Apart from the lack of interest payment on delayed compensation payments (a serious problem in a country where inflation and poverty are endemic) it has been possible under this Act for the government to embargo compensation payments altogether since 1973 (Larbi, 1995). Thus while all expropriation under the colonial policies were paid for, there is a huge domestic debt arising out of unpaid compensation. The actual size of the debt remains unknown but believed to be in the hundreds of millions of dollars (see Hatch, 2001).

Thus during the era of single party political economy, the regulatory and distributive policies started by the colonial autocratic state became widened and strengthened even in countries where due to local oppositions the colonial governments took a more cautious approach to land policy. The policies have also established a culture in which the distribution of vital resources including land during this era became the preserve of the dictatorial regime through coercion rather than consensus (Hameso, 2002). Thus with soaring transaction costs of opposing looming large in the sub-Saharan African policy process, the policies that emerged during this era, as insights from public choice show, were those likely to serve the parochial interest of their originators at the expense of the wider society. What is more disquieting is the policies enacted during this era have proved immutable and they continue to dictate real estate market proceedings in these sub-Saharan Africa countries. Nonetheless a more far reaching consequence of these political regimes is the insurrections and military takeovers that they engendered.

Military Regimes

Events of the single party regimes engendered much anxiety among citizens who had anticipated welfare gains from the achievement of independence (Sender and Smith, 1986). If transaction costs were low, political opposition and pressure groups with the right incentives would emerge to present alternatives and compete for power. This would lead to a change of government at the next elections or even a vote of no-confidence. However, in most of these countries transaction costs of doing so were made almost unbearable and when this culminated essentially in the criminalization of opposition, it was impossible for such a process to emerge. What followed was predictable. If frustration, dissatisfaction, and grievances are sufficiently prolonged or sharply felt, aggression is quite likely, if not certain to occur (Gurr, 1993; 2003). This may have instigated a spate of military takeovers on the continent. Thus a culture of transfer of political power by force in the form of military coups, brutalities, warfare, insurrections, mutinies, severe riots and significant political assassinations (Zolberg, 1968) became the least expensive option. Such was the spate of forced power transfers in Africa under this era that between 1960 and 1985, there were one hundred and thirty one attempted coup d'états in Africa of which sixty were successful and three countries experienced six successful military coups (Bratton and de Walle, 1994).

Out of the fifty-four independent African countries, only six have not experienced attempted or successful coups since independence (Bratton and de Walle, 1994). By 1970, half of the independent African countries (all of which stated as multiparty democracies) had military governments installed through military coup d'état (Bratton and de Walle, 1994). The costs of opposition in these regimes became even more unbearable than under the two earlier models: colonial and single party regimes, discussed above. As Chauveau (1997) noted in the case of Ivory Coast, the state could choose at any time to invoke its overreaching rights and did not hesitate to enforce its wishes with threats of prison if necessary when it was challenged.

Policies thus became what the sovereign desired and not necessarily what was good for the country. Like the previous autocratic regimes, the land policies enacted took two main forms: (a) those that gave the government of the day the right to redistribute land resources by taking landownership away from indigenous owners and (b) those that regulated free trade of real estate commodities. An example of (a) is the case of Nigeria, where, like Ghana the colonial government could not confiscate land in view of opposition, the then military regime successfully enacted the Land Use decree of 1978, which was subsequently incorporated in the Constitution of 1979 and 1999 respectively of Nigeria. The decree required certificates of occupancy to be obtained from the government for land held under customary and statutory rights and the payment

of rent to the government. In another case, one of the results of the Ethiopian Revolution was nationalization of all urban lands without compensation under the Government Ownership of Urban Land and Extra Houses Proclamation (No. 47 of 1975) (see Asiama, 1990, p.242). In addition, in countries like Ghana, at the time of the military intervention policies existed and continue to exist giving the government virtually free right to bring any land in the country under their control for redistribution. Many more lands were thus confiscated under these policies. By the end of these military interventions twenty out of the forty countries in sub-Saharan Africa had nationalized lands and vested in the respective governments the power to redistribute these lands (Mabungunje, 1989). These policies were passed without much opposition due to the soaring costs of opposition.

Though much of the regulatory land policies enacted under the previous regimes remained in force, some regimes enacted more. For instance one of the fundamental outcomes of the 1966 military interventions in Ghana by the National Liberation Council (NLC) was the promulgation for the first time in the country of a regulative land policy that discriminated against foreigners. The policy, which has now been given constitutional backing under Article 266 of the 1992 constitution of Ghana, restricted the length of time foreigners could own land in the country to fifty years. This policy came as part of a range of discriminatory policies by the regime, which proscribed foreign investors from engaging in business activities such as, retail and wholesale trade below a certain turnover, taxi and trucking services, produce brokerage, baking, printing and the manufacture of cement blocks (Card, 1975). The motive behind this policy appears to have been to prevent foreign competition in particular areas of the economy as a way of propping up local entrepreneurs to take up the running of the economy and to safeguard the country against piecemeal colonization. Yet it imposed significant restrictions on the rights of landowners in the country to free trade. Also during the 1981-1992 military intervention led by Ft Lt Rawlings in Ghana, the right of chiefs to grant freehold rights in land even to usufruct owners who want documentary evidence of their holding was taken away by the government under article 265 of the 1992 constitution of Ghana. These laws significantly attenuated the rights of indigenous land owners and festered poverty.

Emergent Democratic Regimes

After a long period of monopolized policy process and high costs of opposition, there was from 1985 a general trend towards democratization of the policy process in sub-Saharan Africa. It was envisaged by the proponents of democracy for Africa, namely the World Bank and other international development agencies that such a policy process would entail much lower transaction costs and formidable opposition would emerge to provide a check on the arbitrary use of government power over the years. In truth if this happens one expects that real estate policies will move towards redressing true market failures and excessive transaction costs. Inefficient policies would also be recalled to pave the way for the efficient functioning of real estate market. Thus understandably the move was greeted with great optimism. Nzongola-Ntalaja (1997, p.9) writes:

Since 1988, the people of Africa have risen to replace one-party and military dictatorships with multi-party democracy. From its violent outbreak in October 1985, in the street of Algiers, this new social movement for democracy has manifested itself all over the continent, changing the rules of the political game and bringing about meaningful reforms in the institutions of the post-colonial state.

After more than a decade of experimenting with democracy in Africa, very little improvement has been achieved particularly in the real estate policy environment. Many autocratic policies enacted to crush opposition by imposing restraints have now received constitutional backings. Large state institutions and bureaucracies have been established with full complement of staff and annual budgets to enforce what were ad-hoc measures to raise transaction costs of political opposition.

The question is why has democracy failed to achieve any meaningful outcome as envisaged? Some argue multiparty politics is not the best fit for Africa where socio-political structures and potent identification are more of ethnicity and less of classes (Hameso, 2002). Others dismiss this idea as unfounded as African culture admits of consensus building in decision making. Employing insights of the discussions above it would appear democracy has failed to yield a better outcome because transaction costs of organizing and maintaining viable opposition still remain high in most African countries despite the installation of democracy in these countries. Most of these so-called democracies are thus operating essentially without practical opposition. This has led to the emergence of despotism in democratic systems. Virtually all the then military regimes in countries such as Gambia, Guinea Bissau until the downfall of Nino Viera, Guinea Conakry, Burkina Faso, Niger under Maina Sara, Chad, Togo, Ghana, Egypt, Libya, Mauritania, Sudan and Madagascar metamorphosed quickly to become civilian governments (N'Diaye, 2000). Those gaining monopolist control over the political system through civil wars and mutiny as in Liberia, Ethiopia, Uganda, Mozambique, Angola and Zimbabwe managed to get elected as democratic leaders. Yet these leaders openly declared their discomfort with democracy as a decision making process. Many governments have locked in on power and do anything to remain in power.

It was logical to expect these leaders to find a way, if possible, to circumvent transaction costs for themselves and to maintain a high transaction costs structure for the opposing forces. These leaders had one important opportunity to accomplish that. Being the “last” autocratic regimes, the onus of drafting new constitutions for the incoming democracies was on them. This offered them the opportunity to set the “rules of the game”. Many of them took advantage of this opportunity and entrenched the policies that heightened the transaction costs of the opposing forces into the new national constitutions. In Ghana for instance all the previously enacted land Acts to crush the opposition, namely the vesting policy, and the concurrence policy together with socialist-motivated policies found their way into the national constitution. The Nigerian Land Use Act of 1978 enacted by the military regime to nationalize all lands in the country also found its way into the 1999 Nigerian constitution. Casting these policies in national constitutions meant the opposition and subsequent administration had huge transaction costs to confront if they wished to reform these policies.

Though democracies in Africa bear substantial traits of democratic systems as known in theory (see Dahl, 1989; Przeworski, 1991; Valenzuela, 1992), very little practical changes have occurred in land and real estate policies. The new additions to land policies during this era is the spate of land redistribution programs initiated in southern African and some eastern African countries to confer on the state power to redistribute land resources with a view to reducing inequities in landownership (Quan, 2000). Substantively however, land and real estate policies have remained largely the same as under previous despotic regimes. Government retains a large measure of power to redistribute land resources and regulate activities of land market participants.

The policy processes of sub-Saharan Africa out of which real estate policies have emerged are invariably monopolized by incumbent political forces. It remains to be understood the actual social costs that such a monopolized policy process could be imposing on society.

THE IMPLICATIONS

What emerges from the forgoing is land policies in Ghana and sub-Saharan Africa in general have evolved from a dictatorial policy environment. Many of the policies enacted entrusted the allocation of land resources in the hands of the incumbent who according to public choice theorists are self-interest maximizers. Accordingly access to these lands generally has not been dictated purely by efficient economic considerations but by the pursuit of the parochial interest of those in charge. As Rimmer cited by Killick (1978, p.51) illustrates, the concern of the administration was “the enrichment of the government itself, (i.e. the ruler, of Ministers, of party leaders, of top civil servants, and possibly of numerous subordinate ranks of the public)”. Thus access to these lands has tended to be heavily lopsided in favor of those who control the government in various ways rather than to those who are in real need. Yet in sub-Saharan Africa efficient and equitable access to land represents an important plank in the quest for poverty alleviation. This is because a significant proportion of incomes are derived from agricultural

activities. Thus efficient and equitable access to land relates powerfully to the ability of the majority of the population of these countries to generate income, construct meaningful livelihood patterns for themselves and ultimately lift themselves out of poverty. Until this pattern of skewed access to land is corrected the potential for poverty alleviation will remain significantly atrophied.

What is disquieting is these land policies are difficult to reverse. These policies materialized because the transaction costs associated with their subversion was too high. Yet, since they offer the monopolist policy actor maximized utility, the monopolist has greater incentive to retain the policy than to do otherwise. When the monopolist regime that enacted those policies is removed and replaced by another monopolist policy actor, these policies are likely to become convenient tools with which the new actor can maximize its utility since it has a similar incentive structure. They are thus unlikely to recall such policies. In fact, if at the time of their assumption of office the benefits that are offered under those policies have been depleted by the previous regime, they are more likely to widen the remit of the policies or even pass new but similar laws so that more benefits can be obtained.

Even when monopolist regimes are replaced by regimes mindful of the economy that wishes to reform these laws for better economic gains, it may not be that easy because of huge associated transaction costs. The relevant transaction costs in this case comprise the costs of providing information to convince the general populace of the need for the reform, the costs of seeking agreement on the way forward and more importantly the costs of convincing and seeking the consent of the existing body of beneficiaries some of which may be the clients of the incumbent, to consent to the reform of the policies. This existing body of beneficiaries includes politicians, bureaucrats, interest groups, clients, the influential and powerful in society among others. It is likely that such consent may not be forthcoming leading to the possible continuous existence of inefficient policies even in “democratic” systems.

CONCLUSION

Having examined how these political processes have shaped land policies in Africa it is clear there is a need for a more radical approach to poverty alleviation. Perhaps, one such way would be for international development agencies involved in poverty alleviation in Africa to make the enactment of rational land policies that guarantee efficient and equitable access to land and the abatement of transaction costs a condition for any donor supports to these countries.

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